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November 19, 2004

By E-mail: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, N.W.  
Washington, DC 20551

**Re: Proposed Changes to Regulation E  
Docket No. R-1210**

Dear Ms. Johnson:

City National Bank is pleased to respond to the request for comments respecting the proposal to amend Regulation E and revise the official staff commentary respecting the regulation. City National Bank is the largest bank headquartered in southern California and one of the one hundred largest banks in the country by assets.

In general, we commend the Federal Reserve Board for its effort to clarify Regulation E and its commentary. We broadly support the proposal as drafted with the following observations and comments.

**Observation and Response: Electronic Check Conversion – Notices.** We share the concern about the uniformity and adequacy of some of the notices provided to consumers respecting electronic check conversion (ECK) transactions. While we believe the banking industry is doing a good job educating consumers respecting ECK, we generally support the proposal that a notice authorizing the ECK transaction be provided with each transaction. However, where multiple payments are made on a single invoice or pursuant to a single transaction, such as mortgage or car payments (using, for example, a coupon book) flexibility should allow for a single ECK notice to cover the multiple payments.

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
November 19, 2004  
Page Two

**Observation and Response: Payroll Cards.** We generally support the application of Regulation E coverage to Payroll Card Accounts used for wages, salary and other compensation. However, the proposal would require periodic statements be provided to the consumer in any month in which an electronic transfer occurs (otherwise, at least quarterly). We believe that Regulation E should allow for alternatives to the periodic statement requirement.

Requiring the expense associated with the mailing of a paper statements will add to the cost of the service and, we believe, can be more effectively replaced by access to account balance and transaction activity information through automated telephone inquiry, ATM inquiry and internet access. The added costs for preparation and mailing of monthly periodic statements will make this service less attractive to employers, consumers and financial institutions and may impede further development and enhancements to these services. Alternative methods of providing consumers access to account and transaction information are more timely and more accessible to the more transient consumers likely to be served by this product. Because of the often transient nature of the employee receiving payment by means of a Payroll Card, requirements similar to those permitted under the regulation for certain government benefit accounts would be more appropriate.

**Comment: Payroll Cards.** Is six months following adoption of final rules sufficient to enable financial institutions to implement the necessary changes to comply with the regulation?

**Response:** While we believe that six months may be sufficient time to implement any necessary changes to comply with the regulation, additional time may be required and is generally desirable and we defer to the comments of others. We believe the "Payroll Card Account" is substantially the same as an existing debit card account and could be adapted quickly. However, we do not have experience with subaccount products and, therefore, cannot comment on timing associated with these accounts. We do know that reviewing changes in the regulations, developing a product, adjusting procedures, implementing mechanical changes, developing training and drafting materials and providing notices all take considerable lead time which could make a six month implement time very tight.

**Comment: Payroll Card Accounts.** Should Regulation E coverage be determined by whether a payroll card account holds consumer funds that qualify for FDIC coverage?

**Response:** No. We distinguish between Payroll Card Accounts that have the characteristics of a debit card accessed traditional deposit account and so-called Payroll Cards that represent the single EFT salary related payments, such as a bonus or expense reimbursement, and

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
November 19, 2004  
Page Three

which are not associated with or deposited in a particular account or subaccount. The former should be covered by FDIC insurance. The latter, characterized as a “gift card,” should not be covered and should not be subject to Regulation E coverage whether eligible for FDIC coverage or not. We support proposed comment 2(b)-2. We believe that to subject these “gift cards” to Regulation E coverage will impede their development and use as originally feared by Congress in 1996.

**Comment: Electronic Check Conversion Authorization.** Should merchants or other payees be required to obtain the consumer’s written signed authorization to convert checks received at Point of Sale?

**Response:** We are concerned about differing rules for NACHA and Regulation E should Regulation E allow signage as sufficient authorization while NACHA requires written authorization. In light of customer confusion over ECK, we believe continuing to require written authorization by the consumer at POS is appropriate.

**Comment: Alternative ECK or Check Processing – Harm to Consumer.** Will a disclosure stating that the payee may “collect” the funds from a check either by ECK or traditionally harm the consumer?

**Response:** We do not believe that such a disclosure will harm or should harm a consumer. Starting from the premise that the check, when written, should have sufficient funds to allow for its immediate payment should the payee chose to present the check to the bank on which it is drawn immediately over the counter following its writing, then advising the consumer that a check may be collected by means of ECK or by other means does no harm whatsoever, especially if the payee and its bank chooses traditional collection. We believe our reasoning is equally applicable to ARC transactions.

**Comment: Alternative ECK or Check Processing – Disclosure.** Should a payee be required to specify the circumstances under which a check will be processed as a check rather than an ECK?

**Response:** We believe that describing the circumstance under which a financial institution or other payee may chose to collect the funds represented by the check will serve merely to confuse the consumer and may cause the consumer to falsely rely on a particular circumstance to “bet” on a slower collection method. Further, disclosing such circumstance may facilitate fraud. The payee should not be limited in check collection to particular disclosed circumstances if the payee has disclosed that a check could be converted under ECK but chooses to collect traditionally through clearings or by other means. On the other

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
November 19, 2004  
Page Four

hand, if the consumer has the option to “opt out” of ECK, we believe that option should be disclosed.

**Observation and Response: 3(c) Exclusions From Coverage.** We are concerned that the revision of Comment 3(c)(1)-1 to authorize a merchant or other payee to electronically debit a fee for insufficient funds from the consumer’s account when the consumer goes forward with the transaction after receiving notice that the fee will be collected electronically, is inconsistent with the NACHA requirement that the authorization be in writing. We encourage that this authorization be in writing so that the consumer knows and understands the charge will be imposed and Regulation E is consistent with NACHA requirements as well.

**Observation and Response: 10(d) Notice of Transfers Varying in Amount.** We support the proposal to provide a range of amounts or agreed differential. we do believe that if he or she chooses to do so the consumer should be a part of the decision to determine the range or differential amount and ask that the option to allow the consumer to be a part of the decision on range or differential amount be made clear.

**Comment: Paragraph 11( c)(4) – Investigation (Four Walls Rule).** Are there circumstances in which the “four walls” rules should not apply?

**Response:** Frankly, we are unfamiliar with the “four walls” rule limitations on investigations as described in the proposal. We support the understanding that a sufficient investigation requires an institution to use relevant information available within its own records for purposes of determining error and do not know of circumstances where the investigation should be limited by the “four walls” rule as described. We would suggest a requirement of a “reasonable” investigation, accompanied in the commentary by specific examples of appropriate steps.

**Comment: Plain Language.**

**Response:** We have no comment.

**Comment: Paperwork Reduction.**

**Response:** We have no comment.

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
November 19, 2004  
Page Five

We thank the Board for providing us the opportunity to comment on this proposal.

If you have any specific questions or require further information, please do not hesitate to contact the undersigned on behalf of this bank.

Very truly,

**City National Bank**  
**Neil B. Martin**

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